

REMARKS

Claims 11, 14, 21-25 and 27-32 were pending in the application. Accordingly, upon entry of the instant response, claims 11, 14, 21-25 and 27-32 will remain pending in the application.

No new matter has been added. Any amendment and/or cancellation of the claims should in no way be construed as an acquiescence to any of the Examiner's rejections and was performed solely in the interest of expediting prosecution of the application. Applicants reserve the right to pursue the claims as originally filed in this or a separate application(s).

***Rejection of Claims 11, 14, 21-25 and 27-32
Under 35 U.S.C. § 102(b)- Anticipation***

The Examiner has maintained the rejection of claims 11, 14, 21-25 and 27-32 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No.: 5,320,861. Specifically, the Examiner asserts that "[t]he cranberry extract analyzed in Table 12 [of the present specification] is prepared using the method set forth in US '861; thus, the extract analyzed in Table 12 is the same extract set forth in US '861" (page 2 of the present Office Action). As such, the Examiner concludes that "US '861 clearly anticipates the claimed composition because...the product of U.S. '861 is the product used in the invention."

Applicants respectfully traverse the foregoing rejection. As the Examiner is aware, for a prior art reference to anticipate the claimed invention, the reference must teach each and every element of the claimed invention. *Lewmar Marine v. Barient*, 827 F.2d 744, 3 USPQ2d 1766 (Fed. Cir. 1987). Applicants acknowledge that the product described in U.S. Patent No.: 5,320,861 can be used in the present invention. Contrary to the Examiner's suggestion, however, the claimed composition does not comprise the same extract as set forth in U.S. Patent No.: 5,320,861. As set forth in the specification at page 3, lines 6-8, the claimed compositions contain "novel combinations and/or ratios of health-promoting compounds derived (*e.g.*, isolated from) from...cranberry." Although the initial step in the preparation of the cranberry extract can use the methods of U.S. Patent No.: 5,320,861, the present application describes methods and techniques for further isolating individual compounds from the extract, as well as methods for

enriching and “scal[ing] up’ the quantity of the isolated components.” For example, at page 15, line 29 through page 17, line 22, Applicant teaches a wide variety of techniques (*i.e.*, solvent extractions, gas liquid chromatography, gas solid chromatography, high pressure or high performance liquid chromatography (HPLC) (*e.g.*, normal, reverse, or chiral), ion exchange chromatography, or size exclusion chromatography) to isolate and enrich particular compounds from the cranberry extract in “sufficient and pure quantities” so that the compounds can be formulated into a composition which is “rich in those components having a therapeutic effect on the disease or condition.”

As such, the claimed compositions do not merely contain the cranberry extract described in U.S. Patent No.: 5,320,861. Instead the claimed compositions contain individual compounds which have been isolated from cranberry extract, enriched above the levels of those particular compounds found in the cranberry extract, and which are selected for formulation into the composition based on their unique therapeutic properties. Importantly, the claimed invention requires that the composition comprise these compounds “in an amount effective to treat or reduce the risk of acquiring a cancer or hypercholesterolemia.” Because the extract described in U.S. Patent No.: 5,320,861 does not comprise the novel ratios and/or combinations of isolated and enriched compounds, nor does it teach that the extracts should be formulated “in an amount effective” to achieve the claimed biological effect recited in the claims, the extract described in U.S. Patent No.: 5,320,861 does *not* teach each and every limitation of the claimed invention, nor would it inherently have the same function as the claimed invention. Accordingly, the claimed invention is not anticipated by U.S. Patent No.: 5,320,861.

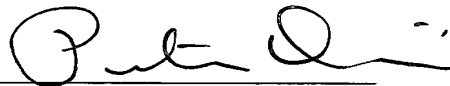
Based on the foregoing, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

CONCLUSION

In view of the foregoing, entry of the amendments and remarks herein, reconsideration and withdrawal of all rejections, and allowance of the instant application with all pending claims are respectfully solicited. If a telephone conversation with Applicants' attorney would help expedite the prosecution of the above-identified application, the Examiner is urged to call Applicants' attorney at (617) 227-7400.

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Respectfully submitted,

By 

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